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VIA ELECTRONIC MAIL AND U.S. MAIL

Jonathan Kramer
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Dear Jonathan:

It was a pleasure meeting with you to discuss in detail the high-speed wireless broadband and 4G network that Clearwire proposes to deploy throughout California. We appreciate you making yourself available and spending time with our engineering, network deployment and legal team members to get a deeper understanding of Clearwire's network architecture, the role that existing Sprint wireless facilities will play in the deployment of Clearwire's facilities, the processes that Clearwire is using to file permit applications, and our views on CEQA and other legal issues. We also appreciate you sharing with us concerns that you anticipate some local jurisdictions may have about the facilities Clearwire proposes to install and the candid feedback you offered regarding how we might improve the application submittal process to ensure that all the local jurisdictions have a clearer picture of the totality of facilities that Clearwire proposes to install in their jurisdiction.

In furtherance of our ongoing dialogue, this letter memorializes the key points we discussed when we met and in so doing hopefully addresses the issues raised in your August 21, 2009 email sent to members of the League of California Cities. We would appreciate you forwarding this information to the members of the League of California Cities who received your original email. We will likely also share this information with those cities where Sprint and Clearwire have pending permit applications.

If you or any of the other Cities are interested in a more detailed discussion regarding any of these matters – or have any additional questions – please let us know. Our goal is to ensure that the jurisdictions in California where Clearwire intends to deploy facilities have all of the information they need to continue to process the applications for these projects in a timely fashion so Californians can be provided with affordable broadband and advanced wireless services as quickly as possible.

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BACKGROUND

Clearwire provides service to more than 50 markets, including several in California. The company offers a robust suite of advanced high-speed wireless broadband services to consumers and businesses. One of the company's key goals is to bring affordable broadband to all segments of the communities it serves. The company is also building the first, nationwide 4G mobile Internet wireless network, bringing together an unprecedented combination of speed and mobility.

Sprint is the third largest wireless carrier in the United States, serving nearly 49 million customers. Sprint offers a comprehensive range of wireless and wireline communications services that bring the freedom of mobility to consumers, businesses and government users. Sprint is the first national carrier to test, launch and market 4G technology, offering mobile broadband that is three to five times faster than today's 3G service.

In November 2008, Clearwire completed a transaction with Sprint and other parties in which Sprint combined its WiMAX business with Clearwire. As a result of the transaction, Sprint owns a majority interest in Clearwire.

One of the key aspects of that transaction is that Clearwire and Sprint have each obtained rights to use certain of the other company's facilities and services on a going forward basis. More specifically, Clearwire has obtained the right to make use of Sprint towers and other cell site locations to deploy its high speed wireless broadband Internet service marketed under the "Clear" brand name. Pursuant to this arrangement in California, Clearwire intends to, whenever possible, collocate its facilities with Sprint. Sprint will resell the broadband service Clearwire deploys to offer advanced wireless broadband offerings and market the service as Sprint 4G.

This sharing arrangement provides numerous advantages to both the companies and to the Cities in which these services are deployed. Most notably, the wireless providers expedite network deployment while reducing costs and the Cities obtain expedited competitive broadband and advanced wireless services *with less infrastructure*. This is especially critical at a time when many Cities across California are seeking to minimize the amount of new wireless infrastructure.

(i) APPLICATIONS FOR PERMITS

As noted above, Clearwire plans to use Sprint sites where possible. Where Sprint sites are not available, Clearwire will attempt to collocate its facilities with other third-party wireless carriers. If third-party facilities are not available, Clearwire will seek permits to install its equipment on existing buildings or other structures to develop a stand-alone site. Clearwire's last choice is to establish "raw land" sites; in fact, such sites will make up an extremely small percentage of the total number of sites deployed in California (*e.g.*, less than 3% of the sites in the greater Los

Angeles area will be "raw land" sites). However, almost all of these new sites will be developed by a tower company that will accommodate other carriers desiring to collocate at the new location. In a limited number of locations, Clearwire is proposing to locate its facilities in the public right-of-way ("ROW").

The method used to file applications will vary by the type of sites. Most of the applications will be filed in Clearwire's name. More specifically, where new Clearwire facilities will be installed on an existing third-party (non-Sprint) wireless site, or involve the construction of a new site, applications will be submitted under Clearwire's name. Where new facilities will be installed on an existing Sprint site, an application will be submitted by Sprint as a modification to its site. Given that Sprint is the permit holder for its sites, the corporate relationship between Sprint and Clearwire, and that the facilities will be used to provide service for both Clearwire and Sprint, such an application process is perfectly appropriate and lawful.

We understand that the process of filing applications in two companies' names may have caused some confusion in certain local jurisdictions about the nature and scope of the proposed construction at issue.¹ This is unfortunate and a situation that Clearwire wishes to correct. Clearwire has a team of site acquisition and entitlement consultants to assist the company with its construction in Southern California. Clearwire has instructed those consultants to communicate with the Cities to ensure that local jurisdictions are aware of the full scope of the proposed network deployment. Although these instructions have been successfully carried out in many jurisdictions, we recognize that there are improvements we can make to ensure that all jurisdictions are getting the complete picture. Clearwire is working with its consultants to ensure such improvements in the process are executed in all locations.

(ii) CLEARWIRE'S STATUS AND RIGHTS

Clearwire is a broadband wireless service provider. It is licensed by the Federal Communications Commission ("FCC") to provide Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") services.² Although the principal purpose of Clearwire's facilities will be to provision broadband services, they will also be used by Sprint and other resellers of Clearwire's service to provide voice grade services. Clearwire does not hold a Certificate of Public Convenience and Necessity ("CPCN") from the California Public Utilities Commission ("CPUC"). However, whether a carrier is regulated by the CPUC has no

¹ Some of this confusion may have been caused in part by the fact that the jurisdictions may have seen more applications from Sprint than Clearwire. As we explained in our meeting, this has occurred largely because the documentation for a number of the Sprint sites was completed prior to applications for some of the third-party sites.

² See 47 CFR §§ 27.4 and 27.5. Section 27.4 defines as "wireless communication services" as "a radio communications service licensed pursuant to this part for the frequency bands specified in 27.5." Section 27.5(i) includes frequencies in the BRS and EBS bands.

bearing on the level of zoning review or the permits it is required to obtain for construction projects (except possibly for projects located in the ROW).³ Instead, that review should focus on traditional land use concerns such as whether the project design meets land use codes and whether Clearwire and Sprint are complying with the frequent directive from local jurisdictions to “collocate whenever possible.”

(iii) COLLOCATION OF FACILITIES UNDER GOVERNMENT CODE SECTIONS 65850.6 & 65964

Government Code Section 65850.6 requires localities to approve, through the issuance of a non-discretionary permit, applications to place wireless facilities on structures where such equipment is already located. As we discussed – provided that the underlying site meets the stated prerequisites in the sections – Clearwire should be able to gain the benefits of these sections for its collocated facilities. Moreover, there is no limit in the statute regarding the number or type of antennas to be installed by the collocating party. Government Code Section 65850.6(d) defines collocating facility broadly to mean “the placement or installation of wireless facilities, *including antennas*, and related equipment, on, or immediately adjacent to, a wireless telecommunications collocation facility” (emphasis added).

(iv) RADIO FREQUENCY (“RF”) EMISSIONS

Like any wireless facility, the Clearwire facilities will emit RF. And, like other wireless facilities, the Clearwire facilities must and do comply with the FCC’s RF regulations.⁴ To the extent they comply with those regulations, the RF emissions from these facilities are not subject to regulation by the local jurisdiction.⁵

(v) CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”)

We spent a considerable amount of time talking about the fact that applications for each site are filed individually (even though the network is interconnected) and your concern that this individual approach may give the impression that Clearwire is trying to piecemeal one project to

³ Notwithstanding Clearwire’s lack of a CPCN, cities should treat Clearwire’s deployment of facilities in the ROW the same as facilities installed by any other provider. Pursuant to Section 332(c)(7)(I) of the Act, state or local regulation of the placement, construction, and modification of personal wireless service facilities may not unreasonably discriminate among providers of functionally equivalent services, and may not prohibit or have the effect of prohibiting such services. Clearwire’s wireless broadband Internet access and voice services are functionally equivalent, if not identical, to the services provided by traditional telecommunications and CMRS service providers.

⁴ See 47 CFR § 1.1310.

⁵ See 47 USC § 332(c)(7)(B)(iv).

avoid CEQA analysis or to mask any cumulative impacts sequential sites may have. As we discussed, on both an engineering and policy level, this is not the case.

The fact that the Clearwire sites are interconnected with each other is nothing unusual and triggers no different CEQA treatment. Elements of all communications networks – whether they are wireless or wireline – need to be interconnected with each other (usually via a switch) so that they can function. Nevertheless, for CEQA purposes, most wireless sites today are considered individually, even if a carrier proposes to build multiple sites in a given jurisdiction in a given year.⁶

The Clearwire network is no different; each of its sites has to be interconnected to its point of presence (“POP”) in order to operate. As Clearwire’s engineer explained in our meeting, the only somewhat unique aspect of Clearwire’s network design is the utilization of microwave to connect multiple sites together in a ring architecture, instead of the more traditional hub and spoke design.⁷ However, even in the ring architecture design, no site is singly dependent on any other site because of path diversity. Moreover each site can function separately and serves a separate use, and if a particular site or group of sites is not built for any reason, this does not prevent the sites in the rest of a City from being built.

Clearwire is not carving up a single project to avoid CEQA analysis, in general, or the cumulative impacts of the projects, specifically. Clearwire chooses its locations on a practical basis depending on need and viability and files the applications when they are ready. Moreover, the limited environmental impacts of Clearwire’s network – to the extent they exist – occur at the individual site level (e.g., whether a specific site is in a scenic vista or on a historic building). The existence of another site twenty blocks or two miles away does not affect the environmental impacts of the first site. Simply put, there are no true cumulative impacts. Thus, the problems that CEQA’s prohibition on piecemealing was intended to avoid are not a factor with this type of telecommunications network.⁸

At our meeting, we discussed the practicalities of applying CEQA analysis to this network. In the vast majority of situations, the installations proposed by Clearwire would either not trigger CEQA (due to the non-discretionary nature of the permit application) or would be exempt from

⁶ You mentioned a recent MetroPCS build in Los Angeles as a possible exception to this general policy. We are exploring this further.

⁷ Moreover even these elements of the Clearwire network are not really different from those in other wireless carriers’ networks. Other wireless carriers are beginning to interconnect sites via a ring design as well, albeit with fiber instead of microwaves. Other wireless carriers are also interconnecting at least some core sites via microwave and may link several microwave sites together at a hub site which ultimately connects with the switch.

⁸ This is in contrast to other types of network development where, for example, the facilities have growth inducing impacts.

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CEQA (qualifying as a small structure, a modification to an existing structure or the administering agency's ability to ascertain that there would be no significant environmental impacts from the project). Only a very few number of sites (primarily "raw land" sites) will even require environmental review.

CEQA inapplicability and exemptions, combined with the above-noted tenets about collocation of facilities and consistent treatment of different wireless carriers, militates in favor of considering the Clearwire sites individually.

(vi) USE OF MICROWAVE DISHES

With respect to the use of microwave dishes, you noted that some jurisdictions may have concerns about the visual impacts of the dishes and that a few jurisdictions have restricted their use. As we explained in the meeting, the use of microwave dishes is critical to the development of Clearwire's network. Microwave antennas have been found to be the most cost-effective and technologically superior mode to interconnect the networks in question. The use of microwave technology will allow Clearwire and Sprint to offer the fastest wireless broadband Internet service available at a very affordable price, making it a very attractive option for all economic segments of society. In most cases, the use of fiber is simply not a realistic alternative given the bandwidth Clearwire needs to operate its network. Moreover, in many cases these microwave antennas are relatively small (typical dishes are 12 or 24 inches in diameter). Thus, the visual impact of these facilities is negligible and, the facilities can often be screened. Thus, we are optimistic that we will be able to work with the local jurisdictions and with you to find ways to install microwave dishes in a manner that will work for Clearwire and not cause undue concern to the Cities.

CONCLUSION

Thank you again for taking the time to meet with us and please do not hesitate to let us know if you have any further questions or concerns with respect to the deployment of Clearwire's facilities.

Sincerely,

Davis Wright Tremaine LLP


Suzanne Toller